

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-217408

DATE: January 18, 1985**MATTER OF:**

Association of Soil and Foundation
Engineers

DIGEST:

1. Protest that an agency should have used the special negotiated procurement procedures prescribed by the Brooks Act for the selection of architectural or engineering firms, filed after the closing date for the receipt of proposals, is untimely since it concerns an apparent solicitation impropriety and, thus, had to be raised before that date.
2. Untimely protest that certain services should be procured under Brooks Act procedures is not a significant issue and will not be considered on that basis.

The Association of Soil and Foundation Engineers (ASFE) protests the use of standard negotiation procedures in a Mine Safety and Health Administration (MSHA) request for proposals (RFP) for a subsurface study on the correction of a landslide at MSHA's Triadelphia, West Virginia site. The protester contends that because the RFP required some engineering services, the special contracting procedures prescribed by the Brooks Act, 40 U.S.C. § 541, et seq. (1982), for the selection of architectural and engineering firms, should have been used.

We dismiss the protest.

The RFP required that proposals be submitted by 2:00 p.m. on September 14, 1984, and this protest was filed on December 18, 1984. Our Bid Protest Procedures state that a protest based on an alleged solicitation impropriety that is apparent prior to the closing date for receipt of initial proposals must be filed before that date. 4 C.F.R. § 21.2(b)(1) (1984). Since the MSHA's use of standard procedures was evident when ASFE received the request for proposals, the protest, filed after proposals were received, is untimely.

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ASFE, however, requests that we consider the matter under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c). The protester alleges that the issue is of particular interest as public safety is involved and as Brooks Act procedures are mandatory where engineering services are necessary.

We find no merit to this request. Our Office will review an untimely protest under the significant issue exception only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. AT&T Information Systems, Inc., B-216438, Sept. 24, 1984, 84-2 CPD ¶ 347. The question here does not fall within this guideline.

Whether or not Brooks Act procedures should be used in a particular procurement has been considered by this Office in prior decisions, and we have held that the question is not a significant issue such as to bring it within the timeliness exception of 4 C.F.R. § 21.2(c). Nielson, Maxwell & Wangsgard, 61 Comp. Gen. 370 (1982), 82-1 CPD ¶ 381.

The protest is dismissed.


Harry R. Van Cleve
General Counsel